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IN THE MATTER OF
WEYERHAEUSER COMPANY (LONGVIEW
PLANT),

Appellant,

v.

STATE OF WASHINGTON,
DEPARTMENT OF ECOLOGY,

Respondent.

PCHB No. 85-206

FINAL FINDINGS OF FACT,
CONCLUSIONS OF LAW AND
ORDER

This matter, the appeal of a civil penalty docket (DE 85-648) issued for a purported exceedence of allowable fallout under the terms of the Clean Air Act and the Washington Administrative Code, came on for formal hearing before the Pollution Control Hearings Board on January 10, 1986, at Lacey, Washington. Seated for and as the Board were Wick Dufford, Lawrence J. Faulk and Gayle Rothrock (presiding). Cheri L. Davidson, court reporter, officially recorded the proceedings.

Appellant appeared and was represented by its legal counsel Patrick D. Coogan. Respondent appeared and was represented by

1 Assistant Attorney General Terese Neu Richmond.

2 Witnesses were sworn and testified. Exhibits were admitted and
3 examined. Argument was heard. From the testimony, evidence, and
4 contentions of the parties, the Board makes these

5 FINDINGS OF FACT

6 I

7 Appellant Company is a timber and wood-products firm with
8 operations in a number of geographic areas including Longview,
9 Washington, where they have several facilities on one industrial-area
10 riverside compound. One of those facilities, a pulp mill, utilizes
11 lime kilns in its process. Three old lime kilns were in operation
12 until October 1985 when they were replaced by one modern lime kiln.

13 II

14 The State Department of Ecology (WDOE) is an environmental program
15 and policy implementing agency whose charge includes the
16 implementation of the Clean Air Act and its regulations, in
17 cooperation with activated air pollution control authorities around
18 the state. WDOE has direct jurisdiction over emissions from pulp
19 mills.

20 III

21 On July 23, 1985, the Southwest Air Pollution Control Authority
22 (SWAPCA) responded to complaints received the previous day about a
23 whitish gritty dust covering cars and seeping indoors over furniture
24 in a residential neighborhood--approximately one-half mile northeast
25 of Weyerhaeuser's Longview pulp mill. A SWAPCA inspector traveled to
26 the area and noted white- and buff-colored gritty dust at the
27

1 residence of one particular complainant. She interviewed two
2 individuals and looked around the general vicinity to hazard a guess
3 about the source of this dust, which in her opinion existed there in
4 enough quantity to interfere with the enjoyment of property.
5 Additionally, she took a dust sample¹ from some furniture and a car,
6 placed it loose in a white envelope and posted it to the WDOE. The
7 sample did not arrive at its destination, apparently having escaped
8 enroute. No photographs of the offending dust were taken by the
9 inspector.

10 The inspector noted road reconstruction and dumpsites of road
11 excavation material nearby. She took no samples of dust from those
12 debris piles. She recounted she did not notice an adjacent burned-out
13 house. No visit was made to the Weyerhaeuser, Reynolds Metals, or
14 International Paper plant sites along Industrial Way. Nonetheless,
15 largely on the basis of proximity, she tentatively concluded that the
16 source of the problem was the Weyerhaeuser mill.

17 IV

18 One of the persons who complained to SWAPCA also complained to
19 Weyerhaeuser. An environmental engineer at the pulp mill suggested
20 that the complainant use a weak vinegar and water solution to wash off
21 the lime dust (a calcium oxide) if that was indeed the nuisance dust
22 the caller was chagrined about. In testimony the engineer recounted
23 the caller said that the vinegared solution did not work. He further
24

25 1. Approximately one teaspoonful.

1 testified the complainant said applying washwater to the dust turned
2 the water black.

3 A vinegar solution does work effectively to clean lime dust from
4 surfaces. Calcium does not become black when mixed with water.

5 V

6 In investigating to determine whether the lime dust might be the
7 culprit, the company's engineer checked with others at the plant to
8 see if they were experiencing any white lime dust as a nuisance on
9 their cars or other vehicles in the employee parking lot downwind just
10 less than one-quarter mile from the kilns. No such occurrence was
11 reported. He personally checked the parking lot and observed no dust
12 he would attribute to the lime kiln operations.

13 Several days later, he walked over to the neighborhood where the
14 complaint originated and noted some dust which he saw as largely
15 buff-colored on a few vehicles. He noted the road debris piles and
16 heavy-duty vehicle traffic patterns on Industrial Way. He testified
17 he was puzzled because lime dust is heavy and would have a quick,
18 clear fallout and his eyes were not revealing a lime dust coating
19 traceable downwind to the residential area.

20 VI

21 The company's lime kiln stack scrubber emissions charts for July
22 21 and 22 show no excursions over the standard and nothing out of the
23 ordinary in the operation of the kilns.

24 However, the old conveyor system for loading the product from the
25 kilns into a lime storage hopper involved an opening near the top of

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-206

1 the bucket elevator from which fugitive dust could and did escape.
2 These emissions were typically minor and did not normally result in
3 the deposition of dust in noticeable amounts beyond the immediate
4 vicinity of the kilns.

5 There is no evidence of any unusual fugitive emissions of lime
6 dust on July 22 or the days immediately preceding.

7 VII

8 Wind and weather data for July 18 through July 22, 1985, for the
9 immediate area indicate dry days with winds which occasionally
10 stiffened to 15 mph in the afternoons and evenings coming out of the
11 northwest the majority of the time. The Weyerhaeuser Pulp Mill lime
12 kiln area is west of the residential area where these dust complaints
13 arose.

14 VIII

15 On July 26, 1985, a WDOE investigator, alerted by SWAPCA, visited
16 the Weyerhaeuser Longview compound and toured the lime kiln area with
17 appellant company's environmental engineer. The investigator noted
18 wisps of fugitive dust from the conveyer system and a deposit of lime
19 dust on the ground at the kilns. He also testified he saw a light
20 dusting of white dust on curbing at the employee parking lot, though
21 none on the parked cars. He took no samples of dust from the plant
22 site.

23 Next the investigator visited the nearby neighborhood and saw
24 whitish dusting throughout the area. His attention was particularly
25 called to dust on vehicles there. In testimony the investigator said

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-206

1 it did not look like road dust. However, he did not know where the
2 vehicles he looked at had been or when they got to where he found them.

3 IX

4 Photographs showing dust were made of parts of three vehicles.
5 Other neighborhood photos were also taken. Samples were taken of the
6 suspect dust from a detached auto windshield found by a house.
7 Samples were not taken of material from the burned out house, nor were
8 samples taken of the road excavation debris pile.

9 The dust samples were sent to the WDOE Manchester laboratories,
10 where a calcium titration test was run. Later a second test--an
11 atomic absorption test--was conducted on the sample. The titration
12 test revealed a 13.5 percent calcium content. The atomic absorption
13 method resulted in a finding of 16.6 percent calcium. These figures
14 are higher than levels normally found in nature but not nearly as high
15 as the calcium content of Weyerhaeuser's Pulp Mill kilns lime dust,
16 which is 64 percent as calculated by the company.

17 No testing was done to see if the entire chemistry of the
18 investigator's samples was like the kiln dust at the mill.

19 In testimony before the Board the WDOE investigator surmised the
20 difference in calcium content between his samples and the kiln dust at
21 the mill is explained by dilution. He guessed that his samples must
22 have contained pollens and other dusts. If true, this would mean that
23 most of the material in the samples came from sources other than the
24 lime kilns.

X

WDOE reflected on its records, including one prior report of fugitive dust problems in the Weyerhaeuser mill's parking lot, and on its conversations with SWAPCA and determined that, with the facts at hand, Weyerhaeuser should incur a \$1,000 civil penalty for particulate fallout from its lime kilns arriving upon nearby residential properties and interfering with their use and enjoyment.

Under authority of chapter 70.94 RCW and WAC 173-405 a penalty docket citing the appellant for a violation was issued by WDOE on September 6, 1985. The date of violation was identified as July 22, 1985, by an amendment to the docket dated October 11, 1985.

XI

In September and October both Weyerhaeuser and WDOE personnel did additional investigative work regarding the lime kilns' role, if any, in the particulate fallout event in the affected neighborhood. Weyerhaeuser performed modeling of the lime kiln emissions based on meteorological data of July 22, 1985. Using a liberal estimate of the likely quantity of fugitive emissions, the modeling exercise showed that the amount which could have reached the complainants residences was so small as not to result in noticeable deposition of particulate matter.

XII

DOE's inspector returned to the complainants' neighborhood in Longview on October 11 and took samples from a nearby debris pile and a parking lot. These samples tested in the laboratory at less than 1

1 percent calcium.

2 The inspector, however, had no information on what had occurred at
3 his sampling sites between July and October or on when the materials
4 in his samples came to rest at the places where he found them.

5 XIII

6 On October 10, 1985, the Board received an appeal of the penalty
7 docket from Weyerhaeuser petitioning for relief from the penalty,
8 asserting there was no evidence the source of dust complained of was
9 appellant's plant.

10 The matter was filed and became our cause number PCHB 85-206.

11 XIV

12 Considering all the evidence we are not persuaded that the dust
13 detected by the complainants at their residences on July 22, 1985,
14 came from the Weyerhaeuser lime kiln operation. We are not sure where
15 it came from.

16 XV

17 Even if some part of the dust emanated from the lime kilns, the
18 evidence does not show that the portion of particulate from such
19 source contributed substantially to any harmful effect. Indeed, no
20 injury nor likelihood of injury to human, health, plant or animal life
21 or to property was shown.

22 Further, it was not shown that unreasonable interference with the
23 use and enjoyment of property occurred. The mere lodging of a
24 complaint is not enough to establish unreasonable interference. The
25 complainants did not testify. We do not know if they are persons of

26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-206

1 normal sensibility. We have no direct evidence of how they were
2 affected.

3 XVI

4 Any Conclusion of Law which is deemed a Finding of Fact is hereby
5 adopted as such.

6 From these Findings of Fact the Board comes to these

7 CONCLUSIONS OF LAW

8 I

9 The Board has jurisdiction over these persons and these matters.
10 Chapters 70.94 and 43.21B RCW.

11 II

12 The provisions implementing the Clean Air Act at Washington
13 Administrative Code (WAC) 173-405-040(8) state:

14 No kraft mill shall cause or permit the emission of
15 particulate matter from any emissions unit which
16 becomes deposited beyond the property under direct
17 control of the owners or operator of the kraft mill
18 in such quantities or of such character or duration
19 as is likely to be injurious to human health, plant
20 or animal life, or property, or will interfere
21 unreasonably with the use and enjoyment of the
22 property upon which the material is deposited.

19 III

20 Neither the necessary effects nor the likelihood of them was
21 proven. Moreover, the necessary causal connection between such
22 effects as there were and appellant's lime kiln operations was not
23 proven. We conclude that no violation of the so-called "fallout
24 regulation" was made out.

25
26 FINAL FINDINGS OF FACT,
27 CONCLUSIONS OF LAW & ORDER
PCHB No. 85-206

1 IV

2 Accordingly, Notice of Penalty Incurred and Due, No. DE 85-648
3 must be reversed and the monetary fine must be vacated. Because we so
4 decide, we do not reach any question concerning the amount of penalty.

5 V

6 Any Finding of Fact which is deemed a Conclusion of Law is hereby
7 adopted as such.

8 From these Conclusions of Law the Board enters this
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1 ORDER

2 Department of Ecology Order Docket No. DE 85-648 is reversed and
3 the associated \$1,000 civil penalty is vacated.

4 DONE this 18th day of March, 1986.

5 POLLUTION CONTROL HEARINGS BOARD

6
7 Gayle Rothrock
8 GAYLE ROTHROCK, Vice Chairman

9
10 Wick Dufford
11 WICK DUFFORD, Lawyer Member

12 Lawrence J. Paulk 3/18/86
13 LAWRENCE J. PAULK, Chairman